

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARJORIE FERRELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	No. C-1-01-447
)	
v.)	Judge Sandra S. Beckwith
)	
WYETH-AYERST LABORATORIES,)	Magistrate Judge Timothy S. Hogan
INC., <i>et al.</i> ,)	
)	
Defendants.)	

**PLAINTIFFS' MOTION FOR ENTRY OF ORDER REGARDING ADMISSIBILITY OF
DEFENDANTS' EXPERT MATERIALS SUBMITTED IN PARALLEL PROCEEDINGS**

Plaintiffs, by their undersigned attorneys, respectfully move this Court to enter the attached Order Regarding Admissibility of Defendants' Expert Materials Submitted in Parallel Proceedings ("Order"). Ex. A.

The deadline for expert discovery is June 30, 2006. Because defendants have submitted expert reports in this action that are largely identical to expert reports submitted in the parallel *JBDL* and *CVS* cases as well as in the *Duramed* case (the "Related Proceedings"), and have in some cases incorporated these reports by reference into the reports submitted in this case, plaintiffs seek to minimize the time and expense of the parties by referring to these expert reports and expert depositions in opposition to defendants' anticipated motion for summary judgment. Plaintiffs do not seek to have this Order entered with regard to any expert reports or depositions used by the plaintiffs in the Related Proceedings.

Plaintiffs require this proposed Order because all evidence submitted by the parties in conjunction with a motion for summary judgment must be admissible under the Federal Rules of

Evidence. *See March v. Levine*, 249 F.3d 462, 471 (6th Cir. 2001) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (quoting Fed. R. Civ. P. 56(e)). This rule applies to movants and non-movants alike.

Plaintiffs' proposed Order is likewise consistent with this Court's Amended Case Management Order No. 1 ("CMO No. 1," attached hereto as Exhibit B), entered on January 9, 2002. Paragraph 13 of that Order provides that "[a]ll discovery taken in the Coordinated Action will apply to subsequently filed and consolidated tag-along cases and the parties will not be required to repeat discovery already undertaken in the Coordinated Action." CMO No. 1 ¶ 13.

For the past several weeks plaintiffs have been consulting with defendants regarding entering this proposed Order as a stipulation. The substance of the proposed stipulation was identical to the proposed Order plaintiffs have submitted with this Motion. Defendants have refused to sign it. Instead, they have only offered to provide plaintiffs with a letter that says defendants will not object to the admissibility or authenticity of the deposition transcripts of defendants' experts in the Related Proceedings, while reserving all other objections, including those preserved at the underlying depositions. Defendants specifically stated that they will not sign the proposed stipulation with regard to their experts' reports because there are matters addressed in the *JBDL* and *Duramed* reports that are not relevant to this proceeding. However, since the proposed stipulation did not require defendants to waive any objections regarding relevance, defendants' position lacks merit. Moreover, plaintiffs are doing for defendants what they typically ask plaintiffs to do: stipulating to the admissibility of defendants' experts' reports. However, in another of a series of what must be "firsts" in the defense bar, defendants will not "concede" that their own experts' reports have any probative value!

For the convenience of the parties and the Court, and consistent with the intentions of this Court's CMO No. 1, plaintiffs respectfully request that the Court grant plaintiffs' motion, enter the proposed Order and grant all other relief that it deems just and proper.

Dated: June 27, 2006

Respectfully submitted,

/s/ Kenneth A. Wexler
One of Plaintiffs' attorneys

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be electronically filed the foregoing pleading with the Clerk of the Court using the CM/EFC system which will send notification of such filing to the following:

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